

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA**

UNITED STATES OF AMERICA

v.

CASE NO: 2:12-00024-1

DONALD CLYDE WHITTEN

DEFENDANT'S SENTENCING MEMORANDUM

Comes now the defendant, Donald Whitten, by and through counsel, Tim C. Carrico, Esq., for the defendant's sentencing memorandum. Mr. Whitten submits this memorandum in support of his request for probation.

I.

18 U.S.C. § 3553(a) factors

Mr. Whitten requests the Court to consider the following factors under 18 U.S.C. § 3553(a) in support of his request for probation.

**The nature and circumstances of the offense and the
history and characteristics of the defendant.**

Mr. Whitten fully cooperated with law enforcement in this matter. He immediately admitted to the wrongfulness of his behavior when initially confronted by law enforcement. He timely executed a plea agreement, entered a plea of guilty, and acknowledged his guilt to both the Court and the probation department. He has cooperated with law enforcement as to the prosecution of other defendants.

Mr. Whitten is 63 years old and has lived an exemplary law abiding with the exception of the matters relating to his conviction. He suffers from serious health problems requiring regular treatment and care.

Recent Health Problems

On June 13, 2012, he received a heart catheter, and was discharged on June 14, 2012.

On June 19, 2012, he had heart surgery and was discharged on June 23, 2012.

On July 5, 2012, he was admitted to the hospital for an infected gall bladder, and was discharged on July 11, 2012.

On July 20, 2012, he had an ER visit to have his T. Tube checked.

On August 9, 2012, he had gall bladder surgery regarding another tube, and was released from hospital the same day.

On August 22, 2012, he had a drain tube removed, and was released the same day from the hospital.

Future Necessary Medical Follow-ups

Cardiac Rehabilitation: This therapy will commence as soon as Mr. Whitten is physically able.

Family Physician Appointments: Every three months.

Cardiologist Appointments: Every three to six months.

Surgeon-Dr. Figueroa Appointments: Every three to six months.

Ulcer follow-ups: As needed.

Carotid Artery disease: Surgery when arteries are at a certain percentage. His diagnosis at the time is severe stenosis carotid artery disease.

Lower Arterial disease, which limits his leg movement and strength.

Community Support

Mr. Whitten has significant community support from friends and family. Attached hereto are copies of character reference letters from friends and family:

- a. Geraldine Peyton
- b. Charles S. McCann
- c. Sharon Jones
- d. Scott and Dee Pauley
- e. Melissa A. Loftis
- f. Kent Cecil

Mr. Whitten has suffered significant punitive consequences as a result of his conviction. He now stands convicted of a felony, which is very significant in light of his past public service and lack of criminal history. He lost his employment with Lincoln County, West Virginia.

The need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense.

In this case, a sentence of probation will reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, based on the facts and circumstances specific to Mr. Whitten set forth above.

The need for the sentence to afford adequate deterrence to criminal conduct.

Based on the circumstances in this case, a sentence of probation will afford adequate deterrence to criminal conduct in the community.

The need for the sentence to protect the public from further crimes of the defendant.

A sentence of probation will protect the public from further crimes by Mr. Whitten. Based on Mr. Whitten's conduct both before and after the instant offense, the PSR, his health,

and his advisory guideline range of 0 to 6 months, this Court can make the finding that Mr. Whitten does not pose a risk a risk to commit further crimes, and that the public good does not warrant his incarceration.

The need for the sentence to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

Mr. Whitten is now retired do to this matter and his health.

The kinds of sentences available.

The Court has the discretion by statute and the advisory guidelines to impose a sentence of probation.

The kinds of sentence and sentencing range established for the applicable category of offense committed by the applicable category of defendant as set for in the guidelines issued by the sentencing commission that are in effect on the date the defendant is sentenced.

Mr. Whitten is a criminal history category I with no criminal history points. His adjusted offense level is only a level 4. Probation is appropriate by statute and the advisory sentencing guidelines.

Any pertinent policy statements

None.

The need to avoid unwarranted sentence disparities amount defendants with similar records who have been found guilty of similar conduct.

None.

The need to provide restitution to any victims of the offense.

N/A.

In conclusion, the factors under 18 U.S.C. § 3553(a) warrant a sentence of probation.

RESPECTFULLY SUBMITTED,

**Donald Whitten
By Counsel,**

s/Tim Carrico

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DONALD CLYDE WHITTEN

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing
“**Defendant’s Sentencing Memorandum**” was served this 27th day of August, 2012, via E-
Filing to the following:

Steve Ruby
Assistant U. S. Attorney
P. O. Box 1713
Charleston, WV 25326

s/Tim C. Carrico
TIM C. CARRICO (WVSB #6771)